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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO.       |
|--|-------------|----------------------|------------------------------|------------------------|
| 10/568,672   | 02/17/2006  | Akihiko Nishio       | L9289,06113                  | 2716                   |
| 52989  | 7590        | 01/21/2010           |                              |                        |
| Dickinson Wright PLLC<br>James E. Ledbetter, Esq.<br>International Square<br>1875 Eye Street, N.W., Suite 1200<br>Washington, DC 20006 |             |                      | EXAMINER<br>HUYNH, NAM TRUNG |                        |
|  |             |                      | ART UNIT<br>2617             | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>01/21/2010      | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/568,672

**Applicant(s)**

NISHIO, AKIHIKO

**Examiner**

NAM HUYNH

**Art Unit**

2617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 11/5/09

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is in response to amendment filed on 10/23/09. Of the previously presented claims 1-30; claims 1-10 have been cancelled and claims 31-34 have been added.

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 11/5/09 has been considered by the examiner.

### ***Claim Objections***

2. Claim 31 is objected to because of the following informalities: A comma is used at the end of the claim when a period is required. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamabe (US 2002/0111163).

Regarding claim 31, Hamabe teaches a base station apparatus comprising:

a deciding section that, when data is transmitted to a terminal (communication is started with the mobile terminal), decides whether to transmit the data using a frequency assigned to the terminal in advance (initially allocated carrier frequency determined in figure 7 and paragraphs 93, 94), or assign a new frequency (either a change to an adjacent or non-adjacent frequency based on a report received after initial allocation) (paragraph 95);

a frequency scheduling section that, when the deciding section decides to assign the new frequency, assigns the new frequency (base station assigns the new frequency when change to the initial allocation is decided upon) (figure 8, items 724, 725; paragraphs 96, 98); and

a transmission section that, when the deciding section decides to assign the new frequency, transmits information representing the new frequency assigned by the scheduling section and transmits the data to the terminal using the new frequency assigned (figure 8, item 726; paragraph 100), and that, when the deciding section decides not to assign the new frequency (no report or report that adjacent carrier frequency can be used and the load of the carrier frequency in use is more than the load of the adjacent carrier frequency), transmits the data to the terminal using the frequency assigned to the terminal in advance (the communication is continued using the initially allocated frequency) (figure 7, no report determination of item 722, negative determination of item 724; paragraphs 98, 99).

Regarding claim 32, Hamabe teaches a terminal comprising:

a determining section that determines whether the terminal is assigned a new frequency by a base station apparatus using control information that is received (mobile station receives report of changed carrier frequency if the base station allocates a new frequency); and

a receiving section that receives the control information, receives data using a frequency represented by information that is included in the control information and related to the new frequency assigned when a determination result is positive (base station sends report of carrier frequency change which is received by the mobile station), and receives the data using a frequency that is assigned to the terminal in advance when the determination result is negative (the communication is continued using the existing allocated carrier frequency when a carrier frequency change is not decided upon by the base station) (paragraphs 95-100; figure 8).

Regarding claim 33, the limitations are rejected as applied to claim 31.

Regarding claim 34, the limitations are rejected as applied to claim 32.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 31-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAM HUYNH whose telephone number is (571)272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

/Nam Huynh/  
Examiner, Art Unit 2617